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SECONDARY MARKETS FUND
(By Ms. Kim Roberts Hedgpeth, Executive Director)

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

KIM ROBERTS HEDGPETH, IN HER
CAPACITY AS EXECUTIVE
DIRECTOR, FILM MUSICIANS
SECONDARY MARKETS FUND,

Plaintiff,

vs.

INITIAL ENTERTAINMENT GROUP,
INC., a California corporation; INITIAL
ENTERTAINMENT GROUP, INC., a
Delaware corporation; IEG; INITIAL
ENTERTAINMENT GROUP; GKF
DISTRIBUTION, LLC, a Texas limited
liability company; AVIATOR, INC., a
California corporation; BEN & BANKS,
LLC, a California limited liability
company; BLACK CIRCLE BOYS
PRODUCTIONS INC., a California
corporation; CAMPFIRE LLC, a California
limited liability company; COMPULSION,
INC., a California corporation; DR. T INC.,
a California corporation; LITTLE CITY,
LLC, a California limited liability
company; NEXT PRODUCTIONS, LLC, a
California limited liability company;
UNFINISHED FILMS, INC., a California
corporation; and Does 1 through 10,
inclusive,

Defendants.

No: 2:16-cv-1604

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) ACCOUNTING;
- (3) MONIES HAD AND RECEIVED;
- (4) RESTITUTION; and
- (5) DECLARATORY RELIEF

JURY TRIAL DEMANDED

1 Plaintiff Kim Roberts Hedgpeth, in her capacity as Executive Director and on behalf of
2 the FILM MUSICIANS SECONDARY MARKETS FUND ("Plaintiff" or "the Fund"), sues
3 the Defendants described above ("the Defendants") for the required statements, payments of
4 residuals and disclosure of books and records from the exploitation of the motion picture
5 and/or television films known as *Ali*, *The Aviator*, *The Campfire Tales*, *Dangerous Lives of*
6 *Altar Boys*, *The Departed*, *Desert Saints*, *Dr. T and the Women*, *Family Plan*, *The Florentine*,
7 *Gramps*, *If These Walls Could Talk*, *Little City*, *Montana*, *Next*, *Rent-A-Kid*, *Traffic* and *An*
8 *Unfinished Life* ("the films"). Other films may be at issue but are unknown to Plaintiff at this
9 time and presumably known to Defendants.

10 INTRODUCTION

11 1. Union musicians and other employees help create movie and television films
12 enjoyed throughout the world. Under industry-wide collective bargaining agreements, the
13 payment to the musicians includes the deferred compensation sometimes known as residuals.
14 The amount of the residuals depends on the amount of worldwide revenues from the
15 worldwide secondary and supplemental markets (e.g., VCR/DVD, Free-TV, Pay-TV, Digital
16 or In-flight) after initial distribution of the films (e.g., in the Movie Theater).

17 2. It is a self-reporting system in which the parties exploiting the films are
18 entrusted to represent accurately and pay faithfully the amounts owed to the Fund as they
19 become due on a continuing and ongoing basis. The Fund, in turn, disburses the payments to
20 the musicians who worked on the films.

21 3. The Fund depends on the parties exploiting a film to report fully and accurately
22 because they have superior if not exclusive knowledge as to their own revenues and
23 contractual arrangements following release of the film. The collective bargaining agreements
24 require the parties exploiting a film to maintain books and records and make them available
25 upon request by the Fund for compliance review to verify the accuracy of their statements and
26 payments and to identify all parties with an obligation.

27 4. The Fund requested a compliance review so the amount of payments owed and
28 the identity of all parties with an obligation may be verified, and certain books and records

1 were made available. Based on Defendants' own records, the compliance review Report
2 shows that the amounts owed were misstated and/or not disclosed as required, unpaid and
3 underpaid and not paid when due. Defendants said they would investigate, and have now had
4 sufficient time to complete their examination and verify the amounts owed, and there have
5 been further discussions and promises of cooperation by Defendants.

6 5. However, as of the date of the Complaint and despite demand, Defendants have
7 failed to explain the underpayments found in the compliance review Report or remit full
8 payments, and, Plaintiff is informed and believes, provide all of the requested information.

9 6. Further, despite demand, there has been a failure and/or refusal to make
10 additional books and records available for review of the continuing exploitation of the films
11 after the compliance review Report to determine if additional amounts are due based on
12 subsequent revenues, if any.

13 PARTIES

14 7. Ms. Hedgpeth is the duly appointed and authorized Executive Director of the
15 Fund, an employee Fund with its principal place of business in Encino, California.

16 8. The Fund was created by and operates under the Basic Theatrical Motion
17 Picture Agreement, the Television Film Labor Agreement and the Film Musicians Secondary
18 Markets Fund Agreement (all of which are written agreements collectively referred to herein
19 as "the Collective Bargaining Agreement") between the motion picture and television industry
20 and the American Federation of Musicians of the United States and Canada, AFL-CIO
21 ("AFM").

22 9. Plaintiff is informed and believes and thereon alleges that INITIAL
23 ENTERTAINMENT GROUP, INC., a California corporation, is or at relevant times was a
24 California corporation, with its principal place of business in Los Angeles County, California
25 conducting business within California, and that it bears, in whole or in part, the duty under the
26 Collective Bargaining Agreement to the Fund. Plaintiff is informed and believes and thereon
27 alleges that INITIAL ENTERTAINMENT GROUP, INC., a Delaware corporation, is or at
28 relevant times was a Delaware corporation, with its principal place of business in Los

1 Angeles County, California conducting business within California, and that it bears, in whole
2 or in part, the duty under the Collective Bargaining Agreement to the Fund.

3 10. Plaintiff is informed and believes and thereon alleges that IEG is an entity of
4 nature and principal place of business unknown to the Fund and that it bears, in whole or in
5 part, the duty under the Collective Bargaining Agreement to the Fund. Plaintiff is informed
6 and believes and thereon alleges that INITIAL ENTERTAINMENT GROUP is an entity of
7 nature and principal place of business unknown to the Fund and that it bears, in whole or in
8 part, the duty under the Collective Bargaining Agreement to the Fund.

9 11. Plaintiff is informed and believes and thereon alleges that GKF
10 DISTRIBUTION, LLC is or at relevant times was a Texas limited liability company, with its
11 principal place of business unknown to the Fund and conducting business within California,
12 and that it bears, in whole or in part, the duty under the Collective Bargaining Agreement to
13 the Fund. Plaintiff is informed and believes and thereon alleges that said Defendant succeeded
14 to that duty in a transaction with one or more of the aforesaid INITIAL ENTERTAINMENT
15 GROUP, INC. corporations, IEG and/or INITIAL ENTERTAINMENT GROUP, at a time
16 and in a manner unknown to the Plaintiff. The respective periods of exploitation for which
17 residuals are owed to the Fund by Defendants INITIAL ENTERTAINMENT GROUP, INC.,
18 a California corporation, INITIAL ENTERTAINMENT GROUP, INC., a Delaware
19 corporation, IEG, INITIAL ENTERTAINMENT GROUP and GKF DISTRIBUTION, LLC
20 is unknown to the Fund but, Plaintiff is informed and believes, known to said Defendants.
21 Accordingly, the relief sought against each, whether for monetary damages or for further
22 compliance review, is for the period in which each bears the duty to the Fund, according to
23 proof.

24 12. Plaintiff is informed and believes and thereon alleges that AVIATOR, INC. is
25 or at relevant times was a California corporation, with its principal place of business in Los
26 Angeles County, California conducting business within California, and that it bears the duty
27 under the Collective Bargaining Agreement to the Fund, in whole or in part, for *The Aviator*.
28

1 13. Plaintiff is informed and believes and thereon alleges that BEN & BANKS,
2 LLC is or at relevant times was a California limited liability company, with its principal place
3 of business in Los Angeles County, California conducting business within California, and that
4 it bears the duty under the Collective Bargaining Agreement to the Fund, in whole or in part,
5 for *Desert Saints*.

6 14. Plaintiff is informed and believes and thereon alleges that BLACK CIRCLE
7 BOYS PRODUCTIONS INC. is or at relevant times was a California corporation, with its
8 principal place of business in Los Angeles County, California conducting business within
9 California, and it bears the duty under the Collective Bargaining Agreement to the Fund, in
10 whole or in part, for *The Florentine*.

11 15. Plaintiff is informed and believes and thereon alleges that CAMPFIRE LLC is
12 or at relevant times was a California limited liability company, with its principal place of
13 business in Los Angeles County, California conducting business within California, and it
14 bears the duty under the Collective Bargaining Agreement to the Fund, in whole or in part, for
15 *The Campfire Tales*.

16 16. Plaintiff is informed and believes and thereon alleges that COMPULSION,
17 INC. is or at relevant times was a California corporation, with its principal place of business
18 in Los Angeles County, California conducting business within California, and that it bears the
19 duty under the Collective Bargaining Agreement to the Fund, in whole or in part, for *Traffic*.

20 17. Plaintiff is informed and believes and thereon alleges that DR. T INC. is or at
21 relevant times was a California corporation, with its principal place of business unknown to
22 the Fund, conducting business within California, and that it bears the duty under the
23 Collective Bargaining Agreement to the Fund, in whole or in part, for *Dr. T and the Women*.

24 18. Plaintiff is informed and believes and thereon alleges that LITTLE CITY, LLC
25 is or at relevant times was a California limited liability company, with its principal place of
26 business in Los Angeles County, California conducting business within California, and that it
27 bears the duty under the Collective Bargaining Agreement to the Fund, in whole or in part, for
28 *Little City*.

1 19. Plaintiff is informed and believes and thereon alleges that NEXT
2 PRODUCTIONS, LLC is or at relevant times was a California limited liability company, with
3 its principal place of business in Los Angeles County, California conducting business within
4 California, and that it bears the duty under the Collective Bargaining Agreement to the Fund,
5 in whole or in part, for *Next*.

6 20. Plaintiff is informed and believes and thereon alleges that UNFINISHED
7 FILMS, INC. is or at relevant times was a California corporation, with its principal place of
8 business in Los Angeles County, California conducting business within California, and that it
9 bears the duty under the Collective Bargaining Agreement to the Fund, in whole or in part, for
10 *An Unfinished Life*.

11 21. The true names and capacities, whether individual, corporate, associate or
12 otherwise, of Defendants Does 1-10, inclusive, are unknown to Plaintiff, who therefore sues
13 said Defendants by said fictitious names. Plaintiff is informed and believes and thereon
14 alleges that each of the Defendants designated herein as a Doe, or otherwise, is legally
15 responsible for the events and happenings described herein and proximately caused injury and
16 damages to Plaintiff as hereinafter alleged. Plaintiff will amend this Complaint to set forth
17 the identities of said Defendants in the event they are ascertained. Upon information and
18 belief, Defendant Does were parties to the hereinafter described agreements, and/or were alter
19 egos or a single enterprise with parties to said agreements and/or expressly or impliedly
20 assumed the obligations thereof through agreement, assignment, conspiracy, ratification,
21 exploitation of the film, receipt of revenue from the film, entity succession, transfer of an
22 interest in copyright or otherwise and/or operation of law, including the Digital Millennium
23 Copyright Act, 28 USC § 4001, and/or were under actual or constructive notice of the
24 obligations thereof such that they are bound by those obligations. Upon information and
25 belief, Defendant Does induced the remaining Defendants to breach their duties and damage
26 Plaintiff as herein alleged, or conspired with, ratified and/or received the benefits of the
27 conduct of the remaining Defendants, such that each is liable for the conduct of one another
28 and/or bound by the obligations of the other to the Fund, including the payment to the Fund of

1 monies owed the union musicians and other participants, to make an accurate report to the
2 Fund and to make information available to the Fund so that it can determine its rights and the
3 rights of the union musicians and other participants that the Fund serves.

4 JURISDICTION AND VENUE

5 22. This court has jurisdiction of this action, including under Section 301 of the
6 Labor Management Relations Act, as amended, 29 U.S.C. § 185, and 28 U.S.C. §§ 1331,
7 1337, 1367, without regard to the amount in controversy or the citizenship of the parties.

8 23. Venue in this district is proper pursuant to 28 U.S.C. § 1391.

9 THE COLLECTIVE BARGAINING AGREEMENT

10 24. The Collective Bargaining Agreement provides for the rates of pay, hours,
11 benefit contributions and other payments, including the compensation sometimes known as
12 residuals.

13 25. The Collective Bargaining Agreement provides that residuals are to be paid on a
14 continuous and ongoing basis from any revenues in the worldwide secondary and
15 supplemental markets following initial exploitation of the films. The residuals are calculated
16 at the effective rate of one percent (1%) of receipts (with certain volume adjustments for
17 digital downloads).

18 26. The Collective Bargaining Agreement provides that the parties paying the
19 residuals are to report accurately to the Fund the amounts they received, if any, from the
20 secondary and supplemental markets when they pay the residuals based on those receipts. The
21 payments are held by the Fund and paid out ratably on an annual basis to the musicians who
22 participated in creating the music soundtrack for the film. The Collective Bargaining
23 Agreement requires the parties owing the residuals to maintain books and records and make
24 books and records available upon request for a compliance review so that the identity of the
25 party owing the residuals and the amount of payments owed may be verified.

26 27. The Collective Bargaining Agreement provides that a party found to have
27 defaulted in payment shall pay, in addition to the overdue amount, liquidated damages in a
28 monthly rate that equates to 10 percent (10%) *per annum* of the delinquent payment, and

1 attorneys' fees, expenses and other disbursements incurred by the Fund in collection of
2 overdue amounts (such as accounting fees).

3 28. Plaintiff is informed and believes and thereon alleges that the Defendants were
4 party to or are otherwise bound by all obligations owing under the Collective Bargaining
5 Agreement; and/or alter ego or a single enterprise with parties to said agreements, acting
6 within the purpose and scope of said agency and that there exists, and at all times herein
7 mentioned existed, a unity of interest in ownership and commingling and overlap of
8 ownership and management such that separation ceased and the Defendants became the alter-
9 egos of each other or a single enterprise such that adherence to the fiction of the separate
10 existence would permit an abuse of the corporate or limited liability company privilege and
11 would promote injustice fraud and unfairness; and/or expressly or impliedly assumed the
12 obligations of said agreements through assumption agreements, distribution agreements and
13 like agreements, assignment, conspiracy, ratification, exploitation of the film, receipt of
14 revenue from the film, entity succession, transfer of an interest in copyright or otherwise
15 and/or operation of law, including the Digital Millennium Copyright Act, 28 USC § 4001.

16 29. Plaintiff is informed and believes and thereon alleges that the Defendants have
17 benefited from these contracts, agreements and arrangements and knew or should have known
18 that in acquiring the economic benefits from the services of the musicians and/or exploitation
19 of the films, they had likewise undertaken the burden of payment, accurate reporting and
20 maintaining and providing access to books and records.

21 MUSICIANS PERFORM WORK

22 30. Union musicians and other participants working under the jurisdiction of the
23 AFM and under the terms of the Collective Bargaining Agreement worked on the films and
24 performed everything required of them. Upon information and belief, union musicians and
25 other participants performed that work with the understanding and in reliance upon the
26 representation that the films were subject to the terms of the Collective Bargaining
27 Agreement, including the promise to pay the Fund and to accurately account to the Fund.

BREACH OF AGREEMENT

31. Plaintiff is informed and believes and thereon alleges that all or some of the films have been and are being shown in one or more secondary or supplemental markets, and have generated and continue to generate revenues on a continuous and ongoing basis in the worldwide secondary and supplemental markets. Plaintiff has received reports of receipts and residual payments and continues to receive reports and residual payments for some or all of the films.

32. As provided by the Collective Bargaining Agreement and according to industry custom and practice, Plaintiff engaged a public accounting firm to conduct a compliance review to verify the accuracy of reports and payments. A compliance review is the Fund's opportunity to confirm that the reports and payments were accurate, and requires that the parties exploiting a film to provide the accountants with information known to them and unknown to Plaintiff, including Defendants' private arrangements for distribution in the worldwide markets, revenues generated in the various worldwide secondary and supplemental and markets and any transfer of responsibility for the residuals to other entities or parties.

33. Defendants agreed to provide the information to the accountants and to cooperate in the review. The accountants completed their work, issuing their Report, subject to various open items where there was insufficient information provided. Based on Defendants' own records, the accountants concluded that the residuals owed had been misstated, underreported and underpaid.

34. The Fund depends upon the parties exploiting the films for accurate information in compliance with the Collective Bargaining Agreement and reasonably relied upon said reporting and non-reporting. The Fund lacks full knowledge of worldwide revenues from the films and Defendants' own contractual or equitable undertakings, and therefore the amounts owed to the Fund and the identity of all parties with an obligation to the Fund.

35. Upon learning of the accountant's findings, the Fund asked that any discrepancies found by the accountants be explained, gave notice of the default, demanded that the full amount owed be paid, warned that liquidated damages would begin to accrue on

1 the overdue amount within sixty (60) days of the default and requested that Defendants advise
2 of any questions.

3 36. The parties have exchanged comments on the matter and there have been
4 discussions, and the Fund has offered to modify the claim should Defendants provide
5 additional relevant information. This is the accepted industry custom and practice in that the
6 Defendants have and the Fund lacks full knowledge of the contractual, equitable and financial
7 aspects of the films. However, as of the date of this Complaint, Defendants neither cured the
8 default disclosed by the accountants nor provided reasonable justification or explanation for
9 the reported underpayments.

10 37. Further, the Fund requested an additional compliance review to determine
11 whether or not there have been subsequent underpayments based on the continuing and
12 ongoing exploitation of the films for the periods after the Report and for any films not
13 covered by the Report and to identify all parties responsible for the payments. However, as of
14 the date of this Complaint, Defendants have not made books and records available for further
15 compliance review.

16 38. The full amount of payments owed to the Fund, from both past and ongoing
17 revenues, cannot be determined without the required statements and reasonable access to the
18 books and records of Defendants. Plaintiff has no adequate remedy at law because, in
19 addition to any monetary damages caused Plaintiff:

20 (a) Defendants' actions and refusals to act directly interfere with Plaintiff's
21 property rights and duties under the Collective Bargaining Agreement, which interference
22 constitutes an irreparable injury irrespective of money damages because it is the Fund's duty,
23 on behalf of the musicians it serves, to determine whether and in what amount it is owed
24 residuals;

25 (b) Defendants' wrongful conduct threatens to cause Plaintiff monetary and other
26 damage which would be extremely difficult to ascertain without the information;

27 (c) Unless an injunction in the form prayed for is issued, Defendants' conduct will
28 tend to render judgment ineffectual in that the rights sought to be protected are the rights

1 sought to be enforced by injunction; and

2 (d) Unless an injunction in the form prayed for is issued, there is likelihood of
3 multiple judicial proceedings to determine the rights of Plaintiff.

4 CLAIM ONE

5 BREACH OF CONTRACT

6 39. Plaintiff hereby incorporates each and every allegation contained in paragraphs
7 1 through 38, inclusive, as though set forth here in full.

8 40. Defendants are in breach of their agreement and duties to the Fund.

9 41. As a direct and proximate result of the foregoing, Plaintiff has been damaged
10 according to proof: i) there are due and owing residuals payments as found by the compliance
11 review; ii) books and records were not provided as required in connection with the
12 compliance review; and iii) Plaintiff has been denied full access to books and records for
13 further compliance review to determine whether and in what amount any subsequent amounts
14 have become due up through and including the date of the complaint and any judgment.

15 42. In addition to an award of monetary damages, Plaintiff seeks a preliminary and
16 permanent injunction against all Defendants and each of them prohibiting them from
17 destroying or moving outside the United States of America any books and records related to
18 determination of payments from the films, and ordering Defendants and each of them to
19 provide access to all books and records related to determination of past, present and future
20 payments, and to make all payments now due or to become due.

21 CLAIM TWO

22 ACCOUNTING

23 43. Plaintiff hereby incorporates each and every allegation contained in paragraphs
24 1 through 38, inclusive, as though set forth here in full.

25 44. Plaintiff is entitled to a full accounting, including i) access to the books and
26 records of Defendants so that the amount of payments owed can be calculated accurately; ii)
27 report of payments due and the identity of all parties owing payments; and iii) payment of any
28 and all amounts due.

1 markets, accurate statements as to those residuals and/or full access to the books and records of
2 Defendants insofar as they relate to those residuals;

3 (b) That Defendants have in breach of their obligations failed and refused and
4 continue to fail and refuse to make payment or provide access to all books and records;

5 (c) That Defendants must provide such payments, statements and books and
6 records as to past residuals owed and as they become due from continuing and ongoing
7 exploitation of the films in the secondary and supplemental markets.

8 60. Plaintiff requests a judicial determination of the respective rights and duties of
9 Plaintiff and Defendants. In particular, Plaintiff seeks a judicial determination:

10 (a) That Plaintiff is entitled to full payment of residuals due, including from past,
11 continuing and ongoing exploitation of the films in the secondary and supplemental markets,
12 accurate statements as to those residuals and the parties owing those residuals and full access
13 to the books and records of Defendants insofar as they relate to those residuals;

14 (b) That Defendants have in breach of their obligations failed and refused and
15 continue to fail and refuse to make payment or provide access to all books and records;

16 (c) That Defendants must provide such payments, statements and books and
17 records as to past residuals owed and as they become due from continuing and ongoing
18 exploitation of the films in the secondary and supplemental markets.

19 61. Such determination is necessary and appropriate at this time in order that
20 Plaintiff may ascertain their rights and duties with respect to the subject film(s) and prevent
21 the irreparable harm it will otherwise suffer.

22 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
23 follows:

24 PRAYER FOR RELIEF

25 1. That this court enter judgment against Defendants and each of them in favor of
26 Plaintiff;

27 2. That this court award Plaintiff compensatory damages in an amount according
28 to proof;

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in this action on all claims allowed by law.

DATED: March 8, 2016

CELLA LANGE & CELLA LLP

By: /s/

Brian L. Cella

Attorneys for Plaintiff THE FILM
MUSICIANS SECONDARY MARKETS
FUND (By Ms. Kim Roberts Hedgpeth,
Executive Director)